

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute (2019)) (LPDD). For background information on the project, see <https://lpdd.org>.

Model State Legislation Promoting the Adoption of Green Leases in Multi-Family Residential Buildings*

Memorandum

The building and construction sector contributes greatly to the current climate crisis. Studies show that buildings consume 36% of energy produced and are responsible for 39% of global carbon emissions.¹ Stakeholders in this sector have created different ways to lower the carbon footprint of their buildings; one such method is “green leasing.”

Green leasing is an opportunity for owners and tenants to work together in going green. Specifically, a green lease outlines the way in which a building will be occupied, managed, and operated to achieve energy efficiency.² In a green lease, a tenant shares the cost burden and benefits of sustainability upgrades and practices with the building owner, resulting in financial and sustainability gains for both parties.³

In addition to financial and sustainability gains, green leasing can also achieve a fundamental shift in what buildings can provide occupants and communities.⁴ For example, renters with green leases may experience:

- More comfort. Warmer and less drafty in winter, cooler and less humid in summer.

* This piece of model legislation was drafted by Nkasi Okafor Wilken (Director of Legal Services, Teach For All) and was peer reviewed by Warren Lavey (Adjunct Associate Professor, University of Illinois, Urbana-Champaign, IL.). Warren Lavey works on climate change and other environmental projects with the World Commission on Environmental Law, Union of Concerned Scientists, and Sierra Club.

¹ Anca Gagiuc, “Building Performance Standards Are de Rigueur for the Future,” Commercial Property Executive, <https://www.commercialsearch.com/news/building-performance-standards-are-de-rigueur-for-the-future/> (last visited June 17, 2022).

² “Green Leases,” iProperty Management, <https://ipropertymanagement.com/blog/green-leases> (last visited June 17, 2022).

³ Stacey Freed, “Green Leases: How They Can Benefit You as a Renter,” Apartment Guide, <https://www.apartmentguide.com/blog/green-leases/> (last visited June 17, 2022).

⁴ “Reference Guide for Landlords,” Green Lease Leaders, <https://www.greenleaseleaders.com/wp-content/uploads/2022/02/Green-Lease-Leaders-Landlords-Reference-Guide-FINAL.pdf> (last visited June 17, 2022);

“Bottom Line: The Business Case for Energy Efficiency in Buildings,” City Energy – A Joint Project of NRDC – IMT, <https://www.cityenergyproject.org/resources/breaking-down-the-bottom-line-the-business-case-for-energy-efficiency-in-buildings/> (last visited June 17, 2022).

- Healthier living environments. With better indoor air quality, families will be less prone to the effects of indoor air pollutants such as allergy and asthma issues, headaches, fatigue, and dizziness.
- Higher productivity. According to recent Harvard University research, improved ventilation showed an 8 percent increase in productivity in study participants.⁵

However, despite the benefits of green leasing, adoption of green leases is more often observable in the commercial sector, and less so in multi-family residences. Due to the short-term nature of residential leases, these lease agreements generally do not include cost recovery clauses allowing amortization and recovery of costs. Therefore, the split-incentive barrier is difficult to overcome in this market; owners of multi-family residential buildings may not be incentivized to bear the cost of sustainable practices during the course of tenants' leases while short-term tenants do not have incentives to bear costs and inconveniences for long-term investments or in many cases to take energy-saving actions.

But multifamily residences must be “greened”; they are too large a part of the building and construction sector to ignore. In the United States alone, nearly 40 million people live in multifamily rental housing.⁶ By “greening” these spaces, significant reductions in emissions can be achieved. A 2017 report by the American Council for an Energy-Efficient Economy (ACEEE) estimates that multifamily energy efficiency has the potential to result in \$3.4 billion in savings per year, along with creating important health, comfort, and environmental benefits.⁷

The model legislation below recognizes the importance of greening multi-family residential spaces and attempts to encourage the adoption of green leases in this market by 1) addressing the problem of split incentives by encouraging/requiring owners to implement efficiency upgrades when units are vacant between residents and 2) affecting owner and tenant behavior towards energy conservation through education, standard setting, and transparency.⁸ The legislation

⁵ Green Lease Workgroup, “Green Lease Guide: Issues, Sample Clauses and Leases, and Links,” Boston Bar Association, <https://bostonbar.org/docs/default-document-library/green-lease-guide-2012.pdf> (last visited June 17, 2022).

⁶ “Bringing Green Leases to Multifamily Buildings,” Institute For Market Transformation, <https://www.imt.org/bringing-green-leases-to-multifamily-buildings/> (last visited June 17, 2022).

⁷ Stefen Samarripas, Dan York, and Lauren Ross, “More Savings for More Residents: Progress in Multifamily Housing Energy Efficiency,” [aceee.org](https://www.aceee.org) (last visited June 17, 2022).

⁸ “Bringing Green Leases to Multifamily Buildings,” Institute For Market Transformation, <https://www.imt.org/bringing-green-leases-to-multifamily-buildings/> (last visited June 17, 2022);

“Benchmarking and Energy Efficiency Rating,” <https://www1.nyc.gov/site/buildings/codes/benchmarking.page> (last visited June 17, 2022).

relies heavily on recommendations from the Workgroup of the Boston Bar Association Environmental Law and Real Estate Sections⁹ and Green Lease Leaders.¹⁰

Model Legislation

Section 1. Purpose and Intent

- (a) The purpose of this statute is to accelerate the adoption of green leases in the multi-family residential building sector to promote energy efficiency and sustainability, resulting in cost savings as well as environmental, health, and comfort benefits. Additionally, this law promotes environmental justice by benefitting many low-income, minority, and elderly residential tenants.

Section 2. Definitions

For the purposes of this Act, the following terms have the following meanings unless the context clearly requires otherwise:

- (a) “Benchmark” or “benchmarking” means to collect data on, input and submit to the benchmarking tool the total use of energy and water for a building for the previous calendar year and other descriptive information for such building as required by the benchmarking tool.
- (b) “Benchmarking tool” means the internet-based database system developed by the EPA to track and assess the energy and water use of certain buildings relative to similar buildings, **Energy Star Portfolio Manager®**.
- (c) “BREEAM” is a third-party assessment certification standard using scientifically-based sustainability metrics and indices which cover a range of environmental issues.
- (d) “Dwelling unit” means a single unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a unit separate from all other units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.
- (e) “Energy” means electricity, natural gas, fuel oil, and steam.

⁹ Green Lease Workgroup, “Green Lease Guide: Issues, Sample Clauses and Leases, and Links,” Boston Bar Association, <https://bostonbar.org/docs/default-document-library/green-lease-guide-2012.pdf> (last visited June 17, 2022).

¹⁰ “Reference Guide for Landlords,” Green Lease Leaders, <https://www.greenleaseleaders.com/wp-content/uploads/2022/02/Green-Lease-Leaders-Landlords-Reference-Guide-FINAL.pdf> (last visited June 17, 2022).

- (f) “ENERGY STAR” is a joint program run by the EPA and the Department of Energy (DOE) that promotes energy efficiency; its goal is to help consumers, businesses, and industry save money and protect the environment through the adoption of energy efficient products and practices.
- (g) “EPA” means the United States Environmental Protection Agency.
- (h) “GREEN GLOBES” is an online assessment protocol, rating system, and guidance for green building design, operation, and management.
- (i) “Green lease” means a legal agreement between owner and tenant outlining the obligations each party will undertake under the lease to promote energy efficiency and sustainability.
- (j) “Green power” means electricity produced from solar, wind, geothermal, biogas, eligible biomass, and low-impact hydroelectric sources. To qualify as “green power”, this renewable electricity must also exceed what is otherwise required by other legal requirements.¹¹
- (k) “HVAC” means the technology of indoor and environmental comfort. It is an acronym for heating, ventilation, and air conditioning.
- (l) “LED” means light emitting diode.
- (m) “LEED” means Leadership in Energy and Environmental Design. It is a green building certification program that provides a framework for healthy, efficient, and cost-saving green buildings.
- (n) “Multi-family residential building” (MFRB) means a building containing two or more dwelling units and 51% or more of square footage is used for residential purposes and not for professional or commercial purposes.
- (o) “Owner” means the owner of record, provided that “owner” shall be deemed to include:
 - (i) the board of managers in the case of a condominium and
 - (ii) the board of directors in the case of a cooperative apartment corporation.
- (p) “PVC” means polyvinyl chloride.
- (q) “R-Value” means the rating system used to grade insulation products or a material’s insulating properties. “R” stands for “resistance” and refers to the resistance a material has to heat flow.

¹¹ “What is Green Power?” United States Environmental Protection Agency, <https://www.epa.gov/green-power-markets/what-green-power> (last visited June 17, 2022).

- (r) “Tenant” means any lawful occupant of a dwelling unit.
- (s) “Turnover,” or “turns over” means the act or process of transitioning a dwelling unit between Tenants.
- (t) “VOC” means volatile organic compounds. VOCs are emitted as gases from certain solids or liquids.
- (u) “WaterSense®” means a program sponsored by the EPA designed to encourage water efficiency in the United States through the use of a special label on water-saving consumer products and services.

Section 3. Energy Efficiency and Green Leases in Multi-family Residential Buildings

- (a) On or before [Date], owners of multi-family residential buildings (MFRBs) shall:
 - a. Meet residential energy efficiency standards developed by [federal agency, state agency, and/or municipal agency]¹²;
 - b. Define a green building operating program through a third-party certification standard (e.g., LEED, BREEAM, ENERGY STAR, Green Globes) and align with the standards of that program; and
 - c. Benchmark their building(s) utilizing the EPA’s online benchmarking tool ENERGY STAR Portfolio Manager®.¹³
- (b) On or before [Date], the following provisions shall pertain to all lease agreements covering one or more dwelling units in an MFRB and shall be reflected in a green lease between each Owner and each Tenant.
 - a. Owners of MFRBs shall, for each MFRB:
 - i. Develop annual targets for energy and water use;
 - ii. Track energy and water consumption data of the common areas and record them monthly in ENERGY STAR Portfolio Manager® or another tracking tool approved by [STATE ENTITY];

¹² For an example of energy efficiency standards developed by a municipality: “SmartRegs Guidebook,” City of Boulder, CO, <https://bouldercolorado.gov/sites/default/files/2021-02/rental-license-smartregs-handbook.pdf> (last visited June 17, 2022).

¹³ For an example of benchmarking legislation: “Local Laws of the City of New York,” City of New York, https://www1.nyc.gov/assets/buildings/local_laws/1184of2009.pdf (last visited June 17, 2022).

- iii. Create an annual report on energy efficiency and sustainability measures. The report shall include the monthly measurements of building energy and water use, the annual ENERGY STAR® score and ENERGY STAR® water score, and shall include annual targets for those measures¹⁴;
- iv. Establish guidelines or a checklist outlining steps for implementing energy-efficient turnovers OR integrate dwelling unit energy efficiency guidance into existing turnover checklist. These guidelines or checklists shall be filed with [STATE GOVERNMENT ENTITY] and made available for inspection by Tenants upon request. Further, these guidelines or checklists shall include the following items:

1. HVAC

- a. Identify areas in a dwelling unit that typically have air leaks. Check and repair these leaks every time a dwelling unit turns over;
- b. Perform basic inspection of air conditioning units. Identify leaks around the unit, clean the filters as necessary, clean or replace air handler filters if present;
- c. Clean bath and kitchen exhaust fans to improve airflow;
- d. Install programmable thermostats that facilitate precise control of HVAC temperature setpoints based on weekday and weekend occupancy schedules. Provide maintenance staff and tenants with guidance on how to efficiently program the thermostats;
- e. Annually commission HVAC units.

2. Water

- a. Evaluate hot water heater insulation. If R-value of the current insulation is less than [Value], add insulation to achieve an R-value of [Value] or greater;
- b. Check pipes and fixtures to fix temperature, insulation flow, and leaks;
- c. Install EPA WaterSense® faucet aerators and shower heads;
- d. Inspect toilets for leaks and repair or replace flappers;
- e. Replace all water fixtures (e.g., faucets, shower heads, toilets) with WaterSense® labeled products (or equivalent high efficiency fixtures) at the end of their use life.

¹⁴ Visibility of a water score 1) allows tenants to better understand their own water performance in the context of the whole building, 2) increases transparency, and 3) establishes more communication between the owner and tenant. “Reference Guide for Landlords,” Green Lease Leaders, <https://www.greenleaseleaders.com/wp-content/uploads/2022/02/Green-Lease-Leaders-Landlords-Reference-Guide-FINAL.pdf> (last visited June 17, 2022).

3. Lighting

- a. Install LEDs in all light fixtures and replace older fixtures if needed.

4. ENERGY STAR® appliances

- a. Check the condition of and clean all appliances. Replace all appliances with ENERGY STAR® designated appliances at the end of their use life.

5. Provide documentation to [state or city or municipal agency] showing how the guideline/checklist is executed.

- v. Purchase [50% / 75% / 100%] “green power” for the [common areas / entire building];
- vi. Always purchase ENERGY STAR® or comparably efficient appliances for the building and the dwelling units;
- vii. Set-up a building-wide recycling, and supply recycling bins to Tenants for recycling according to local and/or municipal law;
- viii. Provide electronics disposal bins for Tenant use;
- ix. Use low VOC-emitting paints, materials, and carpets (VOC content at or below 150 g/L) or ultra-low VOC-emitting paints, materials, and carpets (VOC content below 50 g/L); use carpet-backing material free of PVC; and use non-toxic cleaning products;
- x. Re-issue the green lease annually to Tenants on their green lease anniversary date.

b. Tenants of green leases shall:

- i. Use best efforts to recycle by separating waste stream into designated recycling bins, and dispose of all electronic items in electronic disposal bins;
- ii. Give owner access to data on unit energy and water use for annual reports;
- iii. Use reasonable efforts to help meet building-wide energy and water use reduction goals. Tenants shall minimize unnecessary use of electricity, water, heating and air-conditioning, including recommended use of window shades and curtains to keep out summer heat and keep in winter warmth;
- iv. Use energy efficient products offered in the owner products buying pool, and/or ENERGY STAR® or comparably efficient products/appliances for tenant’s dwelling unit.

(c) The green lease requirements of Section 3(b) of this statute shall supersede all conflicting provisions of MFRB leases after [Date].

